

War on Drugs: Reauthorization and Oversight of the Office of National Drug Control Policy

Updated May 14, 2009

Congressional Research Service

<https://crsreports.congress.gov>

RL32352

Summary

Located in the Executive Office of the President, the Director of the Office of National Drug Control Policy (ONDCP) is responsible for overseeing and coordinating the federal War on Drugs, preparing the National Drug Control Strategy, and running certain drug control programs, such as the High Intensity Drug Trafficking Areas (HIDTA) Program, the National Youth Anti-Drug Media Campaign, and the Drug-Free Communities Program.

The Senate Judiciary Committee held a confirmation hearing on the nomination of Seattle police chief R. Gil Kerlikowske to be Director of National Drug Control Policy on April 1, 2008, at which the nominee promised “a renewed focus on evidence-based approaches to reduce demand for drugs, through prevention as well as treatment.” The full Senate confirmed his nomination on May 7, 2009. A. Thomas McLellan, a drug treatment expert, has been nominated by President Obama to be Deputy Director of ONDCP, a post that also requires the advice and consent of the Senate.

The Domestic Policy Subcommittee of the House Oversight and Government Reform Committee held an ONDCP oversight hearing on March 12, 2008. The ONDCP Director presented testimony on the 2008 National Drug Control Strategy and the 2009 National Drug Control Budget. Two private sector drug researchers offered criticisms of the continuing emphasis on supply reduction and law enforcement and urged increased funding for treatment programs directed at hardcore drug users. Oversight activities are expected to resume in the 111th Congress, and measures to reauthorize ONDCP will likely be introduced and considered.

ONDCP was created in 1988 and has now been reauthorized three times since then, most recently on December 29, 2006, when the Office of National Drug Control Policy Reauthorization Act of 2006 (H.R. 6344) was signed into law (P.L. 109-469), reauthorizing ONDCP through FY2010.

The reauthorization act contains extensive amendments to current law. For example, it requires ONDCP’s annual drug control budget to include all federal drug control activities, including demand reduction, supply reduction, and federally funded state, local, and tribal drug law enforcement. ONDCP revised its method for compiling the federal drug control budget in 2002, narrowing its scope. The act forces a return to more inclusive budget numbers for the federal drug control budget. It statutorily creates the position of U.S. Interdiction Coordinator (USIC) and the Interdiction Committee (TIC) within ONDCP. It contains numerous new reporting requirements, including South American and Afghan heroin strategies, a report on iatrogenic addiction caused by doctor-prescribed opioid analgesic pharmaceuticals, a national drug interdiction plan, a report on intelligence sharing within HIDTAs, and a study on the results of an awards program created by the act to fund demonstration programs on coerced abstinence. It allows the media campaign to focus on marijuana prevention. Mycoherbicides will be studied and tested on U.S. soil as a means of eliminating illicit drug crops.

This report will be updated in the event of further legislative and oversight activities in Congress relating to ONDCP and its leadership of the global War on Drugs.

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Introduction and Background

Located in the Executive Office of the President, the Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988¹ to coordinate the federal government's War on Drugs.

The principal responsibilities of the Director of ONDCP, who is often referred to as the “drug czar,” include

- establishing policies, objectives, and priorities for the National Drug Control program;
- annually promulgating the National Drug Control Strategy and coordinating and overseeing the strategy's implementation by the respective drug control agencies of the federal government;
- making recommendations to the President regarding changes in the organization, management, budgets, and allocation of federal personnel engaged in drug enforcement;
- consulting with and assisting state and local governments with respect to their relations with federal drug control agencies and programs;
- appearing before committees and subcommittees of Congress to represent the drug policies of the executive branch; and
- notifying any federal drug control agency if its policies are not in compliance with the National Drug Control Strategy and transmitting a copy of the notification to the President.

ONDCP's first reauthorizing act, in 1994,² produced limited amendments to the agency's original enacting legislation. It strengthened the Director's powers to influence the allocation of funds and personnel within and between federal drug control departments and agencies. It prohibited presidentially appointed ONDCP officials from participating in federal election campaign activities, except for making contributions to individual candidates. It required the Director to include, in every National Drug Control Strategy, an evaluation of the effectiveness of federal drug control efforts during the preceding year, and it mandated specific measures of effectiveness that the evaluation would include. It required the Director to assess periodically the accuracy of drug use statistics and the factors that restrict the availability of treatment services, and to propose corrective remedies.

ONDCP was reauthorized again in 1998 when Congress rewrote the agency's statutory mandate.³ This time, Congress took advantage of the opportunity, through staff studies and several hearings, to assess the progress of the antidrug effort and to develop specific, measurable goals for reducing drug consumption and drug-related crime in the United States. Annual reports to Congress containing specified measures of progress in implementing the National Drug Control Strategy were again required of ONDCP. This second ONDCP reauthorization act expired during the first session of the 108th Congress on September 30, 2003. Despite the act's sunset provision,

¹ P.L. 100-690, Title I, Subtitle A, National Narcotics Leadership Act of 1988, November 18, 1988, 102 Stat. 4181.

² P.L. 103-322, Violent Crime Control and Law Enforcement Act of 1994, Title IX, Subtitle B, National Narcotics Leadership Act Amendments, September 13, 1994, 108 Stat. 1990.

³ P.L. 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Division C, Title VII, Office of National Drug Control Policy Reauthorization Act of 1998, October 21, 1998, 112 Stat. 2681-670, 21 U.S.C. § 1701 *et seq.*

however, Congress continued to appropriate funds to keep the agency alive until H.R. 6344, the Office of National Drug Control Policy Reauthorization Act of 2006, was signed into law (P.L. 109-469) on December 29, 2006, reauthorizing ONDCP through FY2010. More detail and analysis of ONDCP's third reauthorizing statute can be found below.

Legislative Activities in the 111th Congress

Senate Confirmation of New ONDCP Leadership

The nomination of Seattle police chief R. Gil Kerlikowske to be Director of National Drug Control Policy in the Obama Administration was received in the Senate on March 16, 2009, and referred to the Senate Committee on the Judiciary. At his confirmation hearing on April 1, Kerlikowske promised “restoration of the vitality of the Office of National Drug Control Policy” by building “consensus on how best to use interdiction efforts, law enforcement, treatment, prevention, and sound research to achieve measurable results in reducing drug use and its consequences.” He went on to state, “There will be a renewed focus on evidence-based approaches to reduce demand for drugs, through prevention as well as treatment.”⁴ The full Senate considered and approved his nomination by a vote of 91-1 on May 7, 2009.⁵

On April 10, 2009, President Obama announced his selection of A. Thomas McLellan to be Deputy Director of ONDCP. A University of Pennsylvania psychology professor and a noted expert on addiction and treatment, his nomination, along with that of Kerlikowske, was taken by some as a sign of a shift in federal drug control policy from a primary emphasis on law enforcement and drug interdiction to a tilt toward demand reduction measures such as prevention, treatment, and harm reduction.⁶

The position of Deputy Director, along with three other deputy directors—one each for demand reduction, supply reduction, and state and local affairs—also require Senate confirmation. The three additional nominations are pending.

Other Areas of Possible Congressional Interest

The Senate Committee on the Judiciary and the House Oversight and Government Reform Committee will continue in their roles of authorization and oversight of ONDCP and its programs. ONDCP's authorization will expire at the end of FY2010. Reauthorization bills therefore will likely be introduced and considered by the 111th Congress. ONDCP appropriations fall under the jurisdiction of the Financial Services and General Government Subcommittees in both chambers.⁷ Certain ONDCP programs, such as the National Youth Anti-Drug Media Campaign—which evaluation studies have shown does not work as intended⁸—might continue to

⁴ This testimony and other documents related to the nomination are available on the committee's website at <http://judiciary.senate.gov>.

⁵ “Nomination of R. Gil Kerlikowske to be Director of National Drug Control Policy,” *Congressional Record*, daily edition, vol. 155, part 70 (May 7, 2009), pp. S5267-S5270.

⁶ William Yardley, “Some Find Hope for a Shift in Drug Policy,” *New York Times*, February 16, 2009; “Obama Taps Addiction Specialist for No. 2 Drug Czar,” *Chicago Tribune*, April 10, 2009.

⁷ For a tracking report on ONDCP appropriations see CRS Report RL34523, *Financial Services and General Government (FSGG): FY2009 Appropriations*, by Garrett Hatch.

⁸ U.S. Government Accountability Office (GAO), *ONDCP Media Campaign: Contractor's National Evaluation Did Not Find that the Youth Anti-Drug Media Campaign Was Effective in Reducing Youth Drug Use*, GAO-06-818, August 2006.

receive close scrutiny by both appropriating and authorizing committees in the 111th Congress, as they have in recent congresses.

Oversight of ONDCP in the 110th Congress

In the House, both authorization and oversight of ONDCP lie within the jurisdiction of the Oversight and Government Reform Committee. Accordingly, that committee's Domestic Policy Subcommittee, chaired by Representative Kucinich, held an oversight hearing on March 12, 2008, entitled "The National Drug Control Strategy for 2008, the Fiscal Year 2009 Drug Control Budget, and Compliance with the ONDCP Reauthorization Act of 2006: Priorities and Accountability at ONDCP." The stated purpose of the hearing was to examine (1) the priorities of the 2008 National Drug Control Strategy, (2) the priorities of the FY2009 national drug control budget, and (3) ONDCP's compliance with the reauthorization act, especially the revised budgetary reporting requirements and the mandated performance measurement system.

In his opening statement,⁹ Chairman Kucinich set forth issues concerning "ONDCP's accountability and overall effectiveness" to be covered at the hearing, including

- the lack of transparency and accountability at ONDCP, which impairs ONDCP's and Congress's ability to determine which federal drug control programs are effective in combating drug abuse;
- the failure of ONDCP to include in the national drug control budget "all funding requests for any drug control activity, including costs attributable to drug law enforcement activities such as prosecuting and incarcerating federal drug law offenders," as required by the reauthorization act;
- ONDCP's unwillingness "to comply with the standards of accountability Congress has imposed" in providing Congress with the reports mandated by the reauthorization act;
- the difficulty faced by Congress in determining whether progress is being made in combating drug abuse because ONDCP "doesn't employ consistent or useful performance measures and frequently shifts its policy goals"; and
- the imbalance in the national drug control budget between supply-side programs (such as source-country eradication and interdiction) and demand-side initiatives (such as prevention and treatment), with the supply side receiving a growing share of the budget "despite research that demonstrates that demand-side approaches are generally more cost-effective than supply-side approaches."

Chairman Kucinich also noted that the written testimony of the principal witness at the hearing, then-ONDCP Director John P. Walters, "entirely omits discussion of ONDCP's compliance with the Reauthorization Act despite repeated clear requests that these issues be addressed." The prepared testimony of the other two hearing witnesses, however, did cover the concerns of the subcommittee.

Former ONDCP official John Carnevale expressed his disagreement with the Bush Administration's emphasis on supply reduction:

By the 1990's we had learned that interdiction was a relatively ineffective way of reducing drug use—and expensive besides. So we focused our efforts on demand reduction. Now,

⁹ This statement and the written testimony of the hearing witnesses are available on the subcommittee's website at <http://domesticpolicy.oversight.house.gov/story.asp?ID=1801>.

at the beginning of the new millennium we have—inexplicably—come to believe again that source and transit zone interdiction is an effective way to reduce drug use in America. There is no evidence to support this belief.... In short, what we now know is that so long as there is a demand for illicit drugs, supply will follow.

He pointed out “significant shortcomings” in ONDCP’s meeting of its statutory obligations and said, “As a result of these failures, ONDCP is no longer seen as a serious player in the drug issue.” He outlined some ways to restructure the agency so that it might regain “a meaningful role in shaping drug policy in the next Administration,” such as moving some of its programs to other drug control agencies so that ONDCP could return to being a policy office. According to Dr. Carnevale:

ONDCP must rediscover its roots. By this statement, I mean that ONDCP should again focus on becoming a leader in policy formulation on behalf of the President to allow the Administration to develop a drug policy that is evidence-based and includes performance measurement to hold it accountable for results.

The final hearing witness, Economist Rosalie Liccardo Pacula, co-Director of the Drug Policy Research Center at the RAND Corporation, testified on what research says about the reasonableness of the Bush Administration’s priorities of national drug control. In her view, the 2008 National Drug Control Strategy supports programs in several areas that “have already been shown to be completely ineffective” or that have “never been scientifically proven to be effective and which on analytic grounds seem unlikely to be successful.” These include efforts in Colombia and Afghanistan intended to decrease the supplies in the United States of cocaine and heroin, respectively; random student drug testing; and the National Youth Anti-Drug Media Campaign.

According to Dr. Pacula, research conducted at RAND and elsewhere shows that source-country crop eradication and interdiction efforts along with prevention and education programs work best in emerging drug markets at the early stages of a drug epidemic. Later in the cycle, after the size of the market for a particular drug has grown, the epidemic reaches its mature phase and the number of new users declines. At this point, research shows that treatment programs directed at heavy and dependent users become more cost effective in addressing the problem and reducing use. “Given that drug markets for our three primary drugs of abuse (marijuana, cocaine and heroin) are all in mature stages,” her written testimony stated, “the continued emphasis on supply-side strategies is inappropriate.” She concluded:

The Strategy in its current form is neither balanced nor cost-effective, and as such, suggests a need for Congress to carefully scrutinize the structure of the budget request. By cutting the budget for programs lacking scientific support or strong analytic arguments and reallocating those funds to program areas that are known to be effective, the nation will have a much better chance of successfully reducing substance abuse and its many costs on society. This would produce a Strategy that more closely addresses the drug situation that exists here in the United States.

The first oversight hearing since enactment of the reauthorization act in 2006 thus provided criticisms and insights regarding ONDCP’s leadership of the federal War on Drugs that might influence the appropriations process for FY2009 and beyond, inform future congressional oversight, and even provide the next Administration with ideas for restructuring ONDCP and rethinking the goals and strategies of the federal government’s approach to the problem of drug addiction in American society.

Reauthorization of ONDCP (P.L. 109-469)

H.R. 6344, the Office of National Drug Control Policy Reauthorization Act of 2006, was introduced by Representative Souder on December 5, 2006. Two days later, it passed the House by voice vote, under suspension of the rules, and was sent to the Senate, where it was approved by unanimous consent the following day, the final day of the 109th Congress. H.R. 6344 was signed into law (P.L. 109-469) on December 29, 2006, reauthorizing ONDCP through FY2010.¹⁰

The reauthorization act contains extensive amendments to the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. § 1701 et seq.) The discussion that follows describes and analyzes the provisions of H.R. 6344, as enacted, in the order that they appear in the reauthorization act. The discussion deals primarily with amendments or changes made by H.R. 6344 to the 1998 act. Provisions of the prior law that remain unchanged are mentioned only where necessary to provide context for understanding the revisions made by H.R. 6344.

Short Title and Law Being Amended (Sec. 1)¹¹

Unless otherwise stated, the Office of National Drug Control Policy Reauthorization Act of 2006 amends or repeals provisions contained in the Office of National Drug Control Policy Reauthorization Act of 1998. Since H.R. 6344 was written to amend the expired ONDCP reauthorization act, many of the provisions of this prior law remain untouched by the reauthorization act. These provisions that are carried over from the expired act, along with the amendments provided in H.R. 6344, constitute “current law” and are so designated in the remainder of this report.

Amendments to Definitions (Sec. 101)

The reauthorization act changes the definition of certain terms as they were defined in the expired law (sec. 702) (21 U.S.C. §1701). Perhaps the most important changes are in the definitions of “state and local affairs” and “supply reduction.” Domestic law enforcement directed against drug users has been dropped from the definition of “supply reduction” and placed under the definition of “state and local affairs.” This change serves statutorily to move responsibility for handling domestic law enforcement matters from ONDCP’s Office of Supply Reduction to its Office of State and Local Affairs. These changes are intended to make current law reflect what ONDCP is already doing, in practice, and would make it clear that domestic law enforcement activities serve a wider purpose than supply reduction.

The act also expands the definition of demand reduction to include demand reduction efforts abroad, and it newly defines “appropriate congressional committees” to mean the appropriations and judiciary committees of both chambers along with the Senate Caucus on International Narcotics Control and the House Government Reform Committee.¹²

¹⁰ H.R. 6344 was based on provisions contained in H.R. 2829, which had passed the House during the first session of the 109th, and on S. 2560, which had been reported in the Senate. Hurriedly drafted by Senate and House negotiators during the final weeks of the 109th Congress, and not without its drafting errors (some of which are mentioned below), the legislative history of H.R. 6344 is largely that of H.R. 2829 and S. 2560.

¹¹ The section numbers that appear in the subtitles of this report refer to H.R. 6344 (P.L. 109-469).

¹² The Committee on Government Reform has been renamed the Committee on Oversight and Government Reform in the 110th Congress.

Designation and Duties of ONDCP Officers (Sec. 102)

Responsibilities

Current law (sec. 703(a)) (21 U.S.C. § 1702(a)) requires that ONDCP evaluate the effectiveness of the national drug control policy and agency programs. The reauthorization act has added language requiring that the evaluation be done “by developing and applying specific goals and performance measurements.”

Rank of Director

Current law (sec. 703(b)) (21 U.S.C. § 1702(b)) has been amended by H.R. 6344 to give the ONDCP Director the same “rank and status” as the heads of the executive departments. (Current law already assigns the Director to the same pay scale as the executive department heads.)

Deputy Directors

As in the expired law, the reauthorization act provides for deputy directors for demand reduction, supply reduction, and state, local, and tribal affairs. The act specifies that these three deputy directors report to the Deputy Director of National Drug Control Policy, who reports to the Director. The law further states that the Deputy Director for Supply Reduction must “have substantial experience and expertise in drug interdiction and other supply reduction activities.” The Deputy Director for State, Local, and Tribal Affairs is made responsible for the High Intensity Drug Trafficking Areas Program and the Counterdrug Technology Assessment Center.

Responsibilities of the Director (Sec. 103)

The reauthorization act retains the existing structure of ONDCP and makes limited changes to strengthen the authority of the Director. In addition to the Director’s responsibilities contained in current law (sec. 704(b)) (21 U.S.C. § 1703(b)), the act has added the following:

- supporting the substance abuse information clearinghouse administered by the Substance Abuse and Mental Health Services Administration;
- coordinating with the private sector to promote private research and development of medications to treat addiction;¹³
- seeking the support and commitment of state and local officials in the formulation and implementation of the National Drug Control Strategy;
- monitoring and evaluating the allocation of resources among federal law enforcement agencies in response to significant local and regional drug trafficking and production threats;
- submitting an annual report to Congress detailing how ONDCP has consulted with and assisted state and local governments with respect to the formulation and implementation of the National Drug Control Strategy and other relevant issues; and

¹³ This and the following three provisions were taken from S. 1860 (sec. 103(b)(6)) in the 108th Congress.

- reporting to Congress, within one year after the date of enactment of the reauthorization act, on the impact each federal drug reduction strategy has had upon the availability, addiction rate, use rate, and other harms of illegal drugs.¹⁴

Fund Control Notices

The Director has the power to issue to the head of a National Drug Control Program agency a fund control notice to ensure that agency's compliance with the National Drug Control Strategy (sec. 704(d)(9)) (21 U.S.C. § 1703(d)(9)). A fund control notice may direct that all or part of an amount appropriated to the National Drug Control Program agency account be obligated by specific periods of time (monthly, quarterly, etc.) and by specific activities, functions, projects, or object classes. National Drug Control Program agencies are not permitted to expend funds contrary to a fund control notice issued by the ONDCP Director.

H.R. 6344 has amended the fund control notice provisions of current law (sec. 704(f)) (21 U.S.C. § 1703(f)) to require that a copy of each fund control notice be transmitted to the appropriate congressional committees. It also has restricted the Director from issuing a fund control notice to direct that all or part of an amount appropriated to a National Drug Control Program agency account be obligated, modified, or altered in any manner contrary, in whole or in part, to a specific appropriation or statute. (Due to a drafting error, this provision is repeated later in H.R. 6344 (sec. 105(f)) with slightly different wording.)

Drug Interdiction (Sec. 103(f))¹⁵

U.S. Interdiction Coordinator

In 2002, Congress legislatively created the position of U.S. Interdiction Coordinator (USIC) within the Department of Homeland Security.¹⁶ The position had existed previously within ONDCP, but without statutory authority. The reauthorization act has restored the position of USIC to ONDCP through amendment of the Homeland Security Act but is oddly silent as to certain details of the position, such as who appoints the USIC and where the position is to be located within the agency. The reauthorization act provides that the USIC is responsible to the Director for

- coordinating the interdiction activities of the National Drug Control Program agencies to ensure consistency with the National Drug Control Strategy;
- developing and issuing, by March 1 of each year, a National Interdiction Command and Control Plan to ensure consistency with the National Drug Control Strategy;
- assessing the sufficiency of assets committed to illicit drug interdiction by the relevant National Drug Control Program agencies; and

¹⁴ This provision was added to H.R. 2829 by an amendment offered by Rep. Robert Scott at the House Judiciary markup.

¹⁵ This section of H.R. 6344 appears to contain a drafting error. The language relating to drug interdiction is written as if it were replacing sec. 711 of the expired act, but the bill says the new language is to be added *at the end* of sec. 711. The old sec. 711 actually contains reporting and budget planning requirements relating to interdiction that are outdated and should be replaced, not added to. These and other drafting errors undoubtedly occurred because of the hurried manner in which the bill was prepared near the close of the 109th Congress.

¹⁶ Homeland Security Act of 2002, sec. 878, P.L. 107-296, November 25, 2002, 116 Stat. 2245, 6 U.S.C. § 458.

- advising the Director on the efforts of each National Drug Control Program agency to implement the National Interdiction Command and Control Plan.

The reauthorization act further specifies that the Director will assign permanent ONDCP staff, as appropriate, to help the USIC carry out the responsibilities of the position and may also request that appropriate National Drug Control Program agencies detail or assign staff to the Office of Supply Reduction for that purpose.

National Interdiction Command and Control Plan

The reauthorization act provides that the National Interdiction Command and Control Plan (NICCP) prepared by the USIC will

- set forth the federal government's strategy for drug interdiction,
- state the specific roles and responsibilities of the relevant National Drug Control Program agencies for implementing the strategy,
- identify the specific resources required to enable the relevant National Drug Control Program agencies to implement the strategy, and
- be issued in consultation with the other members of the Interdiction Committee.

The NICCP cannot change existing agency authorities or the laws governing interagency relationships, but it may include recommendations about making such changes.

Report to Congress

The reauthorization act further requires that, on or before March 1 of each year, the USIC will provide a report to Congress,¹⁷ on behalf of the Director, that will include

- a copy of that year's National Interdiction Command and Control Plan;
- information for the previous 10 years on the number and type of seizures of drugs by each National Drug Control Program agency conducting drug interdiction activities, as well as statistical information on the geographic areas of such seizures; and
- information for the previous 10 years regarding the number of air and maritime patrol hours undertaken by each National Drug Control Program agency conducting drug interdiction activities, as well as statistical information on the geographic areas in which such patrol hours took place.

Any classified or sensitive information will be presented to Congress separately from the rest of the report.

Interdiction Committee

The Interdiction Committee (TIC) has existed for many years, and the reauthorization act creates it statutorily for the first time. The purpose of the TIC, as stated in the reauthorization act, is to

¹⁷ This report will be provided, in the Senate, to the Committee on the Judiciary, the Committee on Appropriations, the Caucus on International Narcotics Control, the Committee on Homeland Security and Governmental Affairs, and the Committee on Armed Services and, in the House, to the Committee on Government Reform, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Armed Services, and the Committee on Homeland Security.

- discuss and resolve issues related to the coordination, oversight, and integration of international, border, and domestic drug interdiction efforts in support of the National Drug Control Strategy;
- review the annual National Interdiction Command and Control Plan and provide advice to the Director and the United States Interdiction Coordinator concerning that plan; and
- provide other advice to the Director concerning drug interdiction strategy and policies, as deemed appropriate by the committee.

Meetings of the Interdiction Committee

The members of the TIC will meet, in person and not through any delegate or representative, at least once per calendar year, prior to March 1. At the call of either the Director or the current chairman, the TIC can hold additional meetings, which will be attended by the members either in person or through their chosen delegates or representatives.

Report of the Interdiction Committee

Not later than September 30 of each year, the TIC chairman will submit a report to the Director and to the appropriate congressional committees describing the results of the meetings and any significant findings of the TIC during the previous 12 months. Any classified or sensitive information will be presented to Congress separately from the rest of the report.

Coordination With Other Agencies (Sec. 104)

The reauthorization act amends current law (sec. 705(a)(3)) (21 U.S.C. § 1704(a)(3)) to mandate that the Secretaries of the Interior, Agriculture, Homeland Security, and Defense prepare annual reports for the Director and specified committees of Congress detailing specific aspects of their departments' drug control activities. The act also requires a report from the Attorney General on drug violation arrests and prosecutions and drug seizures. These new reporting requirements are designed to help the agencies allocate resources and to aid the committees in their oversight function, especially as it relates to assessing the impact of diverting drug control assets to unrelated missions.

Budgetary Matters (Sec. 105)

The ONDCP Director develops a consolidated National Drug Control Program budget based on the budget request proposals received from the National Drug Control Program agencies. ONDCP revised its method for compiling the national drug control budget summary in 2002. As a result, total funding included in the FY2003 drug budget request was revised downward from \$19.2 billion to \$11.4 billion. Under the new method, activities were included only if they were deemed to have a "primary" drug control purpose and if they had a separate line item account in the President's annual budget request. These changes resulted in lower budget numbers for many drug control agencies and the elimination of some agencies from the drug control budget altogether.

ONDCP said the new drug budget would better serve Congress and the public and bring greater accountability to federal drug control efforts. Others, however, including some Members of Congress, said the new drug budget distorted the true costs of the War on Drugs by, among other things, excluding the costs of incarcerating drug offenders and the costs of other drug law enforcement activities. This served to exaggerate the proportion of the budget slated for drug

treatment expenditures, thereby making the budget appear more evenly balanced between enforcement and prevention than in previous years, even though little if any change had actually taken place.

The reauthorization act contains provisions designed to force ONDCP to return to the older, more inclusive way of calculating the federal drug control budget summary.

Submission of Drug Control Budget Requests

Under current law (sec. 704(c)(1)) (21 U.S.C. §1703(c)(1)), the head of each National Drug Control Program agency must submit annually to the ONDCP Director a copy of the agency's proposed drug control budget request before it is submitted to the Office of Management and Budget. The reauthorization act adds the requirement that drug control budgets submitted by departments, agencies, or programs must include all funds being requested for any drug control activity undertaken by that entity, including demand reduction, supply reduction, and state, local, and tribal affairs, and also including any drug law enforcement activities.

Furthermore, if an activity has both drug control and nondrug control purposes or applications, the department, agency, or program must estimate, by a documented calculation, the total funds requested for that activity that would be used for drug control, and must set forth in its budget request the basis and method used in making the estimate.

National Drug Control Budget Proposal

In addition to consulting with the head of each drug control agency, as required by current law (sec. 704(c)(2)) (21 U.S.C. §1703(c)(2)), the reauthorization act requires that the Director, in drawing up the national drug control budget proposal, also consult with "the head of each major national organization that represents law enforcement officers, agencies, or associations."¹⁸

Certification of the National Drug Control Budget

The responsibility of the Director to review and certify the budget requests of national drug control program agencies is considered a vital tool of the Director in planning and implementing an effective national antidrug strategy. H.R. 6344 adds new requirements to the budget certification process. The Director is now prevented from approving any agency's proposed budget that requests funding for

- federal law enforcement activities that do not adequately compensate for transfers of drug enforcement resources and personnel to unrelated activities such as counterterrorism;
- law enforcement activities along U.S. borders that do not adequately direct resources to drug interdiction and enforcement;
- drug treatment activities that do not provide adequate results and accountability measures;
- any activities of the Safe and Drug Free Schools Program that do not include a clear antidrug message or purpose intended to reduce drug use;

¹⁸ This provision was added to H.R. 2829 by a floor amendment offered by Rep. Terry and was carried over to H.R. 6344.

- drug treatment activities that do not adequately support and enhance federal drug treatment programs and capacity;¹⁹
- activities of the Department of Education for FY2007, unless the request is accompanied by a report setting forth a plan for providing expedited consideration of student loan applications for all individuals whose applications were denied because of a conviction for a drug-related offense that occurred when the individual was not receiving federal assistance; and
- the operations and management of the Department of Homeland Security that does not include a specific request for funds for the Office of Counternarcotics Enforcement.

Reprogramming and Transfer Requests

The expired act contained a requirement (sec. 704(c)(4)(A)) (21 U.S.C. § 1703(c)(4)(A)) that no national drug control agency shall submit to Congress a request to reprogram or transfer any amount of appropriated funds over \$5 million that is included in the federal drug control budget unless the request has first been approved by the Director. The reauthorization act has reduced that amount to \$1 million. The act also provides that if the Director has not responded to an agency request for reprogramming within 30 days, the request shall be considered approved by the Director and forwarded to Congress.

Fund Control Notices

In an apparent drafting error, the provisions concerning fund control notices that appear in sec. 103 of the reauthorization act, and which are discussed earlier in this report, are repeated here with slightly different wording.

Annual National Drug Control Strategies (Sec. 201)

Under the reauthorization act, the preparation, submission, implementation, and assessment of the National Drug Control Strategy remain one of the most important responsibilities of ONDCP. The emphasis in the expired act (sec. 706(a)) (21 U.S.C. § 1705(a)) on a five-year strategy supplemented by annual updates is shifted to the preparation of annual strategies. The act does, however, keep the provision in current law that requires the strategies to include five-year projections for program and budget priorities. The annual strategies continue to be due from the President to Congress no later than February 1 of each year.

Strategy Contents

The contents that must be included in the annual strategies under the reauthorization act are largely the same as those that were required under the expired law. A new requirement is a summary of the efforts made to coordinate with private sector entities to conduct private research and development of medications to treat addiction by screening chemicals for their potential therapeutic value, developing promising compounds, conducting clinical trials, seeking Food and Drug Administration approval for drugs to treat addiction, marketing drugs for the treatment of

¹⁹ This language, inspired by two amendments proposed by Rep. Cummings and adopted by voice vote at the House Government Reform subcommittee markup of H.R. 2565 in the 108th Congress, is intended to apply to the Substance Abuse Prevention and Treatment block grant program and the Targeted Capacity Expansion grant program of the Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

addiction, urging physicians to use such drugs in the treatment of addiction, and encouraging insurance companies to reimburse the cost of drugs used in the treatment of addiction.

Also newly required is a supplement to the strategy that reviews the activities of each individual National Drug Control Program agency during the preceding year with respect to the National Drug Control Strategy and that contains the Director's assessment of the progress of each agency in meeting its responsibilities under the strategy.

The reauthorization act drops the specific numerical targets for reducing drug use contained in the expired law (sec. 706(a)(4)) (21 U.S.C. § 1705(a)(4)). These targets covered the period 1999 to 2003 and were largely unmet. The act lets stand, however, the requirement for comprehensive, long-range, and quantifiable goals for reducing drug abuse and its consequences, backed by annual objectives and targets that are designed to move the country toward the strategy's goals and objectives.

Process for Development and Submission

Current law (sec. 706(a)(3)(A)(i)) (21 U.S.C. § 1705(a)(3)(A)(i)) requires the Director, in developing and effectively implementing the National Drug Control Strategy, to consult with

- the heads of the National Drug Control Program agencies;
- Congress;
- state, local, and tribal officials;
- private citizens and organizations, including community and faith-based organizations, with expertise in demand reduction;
- private citizens and organizations with experience and expertise in supply reduction; and
- appropriate representatives of foreign governments.

Tribal officials and community and faith-based organizations were newly added to this list by the reauthorization act. The act also requires the Director to ensure, to the maximum extent possible, that state, local and tribal officials and relevant private organizations commit to support and take steps to achieve the goals and objectives of the National Drug Control Strategy.

Current law (sec. 706(a)(3)(A)(ii)) (21 U.S.C. § 1705(a)(3)(A)(ii)) permits the Director, with the concurrence of the Attorney General, to require the El Paso Intelligence Center to undertake specific tasks and projects to implement the National Drug Control Strategy and, with the concurrence of the Director of National Intelligence and the Attorney General, to request that the National Drug Intelligence Center undertake specific tasks or projects to implement the strategy.

Performance Measurement System

The expired act (sec. 706(c)) (21 U.S.C. § 1705(c)) required that a performance measurement system be designed in consultation with affected National Drug Control Program agencies and be submitted to Congress no later than February 1, 1999, with modifications to be included in subsequent annual strategy reports. The reauthorization act retains this requirement with certain changes. The performance measurement system is to be submitted annually as part of the strategy and will contain two- and five-year performance measures and targets for each National Drug Control Strategy goal and objective established for reducing drug use, drug availability, and the consequences of drug use. It will describe the sources of information and data to be used for each performance measure. It will also assess the adequacy of existing national treatment outcome

monitoring systems to measure the effectiveness of drug abuse treatment in reducing illicit drug use and criminal behavior during and after the completion of substance abuse treatment.

Dropped is the provision in the expired act that required the drug control performance measurement system's performance objectives, measures, and targets to be revised to conform with National Drug Control Program agency budgets. Also dropped is the requirement that the performance measurement system be designed in consultation with affected National Drug Control Program agencies. Other aspects of the drug control performance measurement system remain largely unchanged.

Annual Report Requirements (Sec. 203)²⁰

Media Campaign ²¹

H.R. 6344 requires the Director to submit annually, by February 1 of each year, a report to Congress on the National Youth Anti-Drug Media Campaign that describes

- the strategy of the media campaign and whether specific objectives of the campaign were accomplished;
- steps taken to ensure that the media campaign operates in an effective and efficient manner consistent with its overall strategy and focus;
- plans to purchase advertising time and space;
- policies and practices implemented to ensure that federal funds are used responsibly to purchase advertising time and space and eliminate the potential for waste, fraud, and abuse;
- all contracts entered into with a corporation, partnership, or individual working on behalf of the media campaign;
- specific policies and steps implemented to ensure compliance with the media campaign provisions of this act;²²
- steps taken to ensure that the media campaign will secure, to the maximum extent possible, no-cost matches of advertising time and space or in-kind contributions that are directly related to the statutory purposes of the campaign; and
- a review and evaluation of the effectiveness of the media campaign strategy for the past year.

Audit

The reauthorization act requires the Government Accountability Office (GAO) to conduct, at least annually, an audit and investigation of the operations of ONDCP, including the High Intensity Drug Trafficking Areas program, the Counterdrug Technology Assessment Center, and the National Youth Anti-Drug Media Campaign. The GAO report, which will be provided to the

²⁰ Due to a drafting error, the reauthorization act contains no sec. 202.

²¹ Due to a drafting error, this reporting requirement is repeated in sec. 501 of the reauthorization act minus the final three report elements shown here. The date of February 1 is also absent from the later iteration of this reporting requirement.

²² In another apparent drafting error, this and the following reporting requirements refer textually to Title IV of the act, which covers the Counterdrug Technology Assessment Center, instead of Title V, which reauthorizes the media campaign. The incorrect reference to title IV probably comes from the Senate bill, S. 2560. The descriptions of the two reporting requirements that appear here are adjusted to reflect the intent of the law rather than its actual wording.

Director and the appropriate congressional committees, must contain an evaluation of, and recommendations on, the policies and activities of ONDCP and its programs, their economy, efficiency and effectiveness, and any policy or management changes needed to prevent and detect fraud and abuse in the operation of the programs.

High Intensity Drug Trafficking Areas Program (Sec. 301)

The expired act (sec. 707) contained only four brief sub-sections relating to the High Intensity Drug Trafficking Areas (HIDTA) Program. The reauthorization act greatly expands the statutory requirements that ONDCP must follow in conducting the program and reflects the high level of congressional interest in how the program should be run.

Program Purpose

The expired law did not explicitly state the purpose of the HIDTA Program. In the 108th Congress, the House bill (H.R. 2086) and the Senate bill (S. 1860) attempted to correct this omission, albeit with differing results. In their statements of purpose, both bills emphasized the importance of facilitating cooperation, intelligence sharing, and coordination of strategies and drug enforcement activities between federal, state, and local law enforcement agencies in the 28 groupings of U.S. counties now designated as HDTAs. It was never clear, however, whether individual HDTAs were created to deal with local and/or regional problems or if their activities must address drug problems of national scope. The Senate bill (sec. 301(2)) stated that these efforts were “to reduce the supply of illegal drugs in HIDTA designated areas.” The House bill (sec. 6(a)), along with the Government Reform Committee’s report,²³ stressed that the purpose of HDTAs is to deal with “drug trafficking problems that harmfully impact other parts of the Nation.”

In the 109th Congress, both H.R. 2829 (sec. 9) and S. 2560 (sec. 707) adopted the language from the previous Senate bill verbatim, except that the phrase “to reduce the supply of illegal drugs in HIDTA designated areas” was modified to read “to reduce the supply of illegal drugs in designated areas *and* in the United States as a whole” [emphasis added]. This dual purpose was carried over into H.R. 6344 and is now law.

Petitions for Designation

Previously, there were no statutory or even regulatory requirements concerning how HDTAs are designated beyond the directive in the expired act that the Director may designate such areas in consultation with the Attorney General, the Secretary of the Treasury, heads of the National Drug Control Program agencies, and the governors of the applicable states. Most HDTAs have been designated through this consultative process, although a few have been created by Congress in appropriations acts.

The reauthorization act retains the consultative process for designating HDTAs and, in addition, requires the Director to establish regulations under which a coalition of interested law enforcement agencies from an area may petition for designation as a HIDTA. These regulations must provide for a regular review by the Director of the petition, including a recommendation regarding the merit of the petition to the Director by a panel of qualified, independent experts.

²³ U.S. Congress, House Committee on Government Reform, *Office of National Drug Control Policy Reauthorization Act of 2003*, report to accompany H.R. 2086, 108th Cong., 1st sess., H.Rept. 108-167, part 1, June 19, 2003 (Washington: GPO, 2003), pp. 21-25.

Organization of HIDTAs

The expired act did not address how HIDTAs should be organized and operated. The reauthorization act goes into considerable detail on this subject and would bring the law into alignment with current practice. Each HIDTA, as is now the case, is to be governed by an Executive Board. The Executive Board, composed of an equal number of votes between representatives of federal agencies and state and local agencies,²⁴ would be responsible for

- providing direction and oversight in establishing and achieving the goals of the HIDTA,
- managing the HIDTA's funds,
- reviewing and approving all funding proposals consistent with the overall objective of the HIDTA, and
- reviewing and approving all reports to the Director on HIDTA activities.

Treatment Prohibition

The reauthorization act retains the provision in the expired act that no HIDTA funds may be used to establish or expand drug treatment programs.²⁵ It adds the requirement that up to 5% of federal funds appropriated for the program can be expended to establish drug *prevention* programs.²⁶

Counterterrorism Activities

The reauthorization act allows the Director to authorize the use of available HIDTA resources to assist federal, state, local, and tribal law enforcement agencies in investigations and activities related to terrorism and terrorism prevention, especially when such investigations and activities are also related to drug trafficking. The Director, however, is required to ensure that assistance provided for counterterrorism remains incidental to the HIDTA Program's purpose of reducing drug availability and carrying out drug-related law enforcement activities, and that significant program resources are not redirected to activities exclusively related to terrorism, except on a temporary basis under extraordinary circumstances, as determined by the Director.

Role of the Drug Enforcement Administration

The Director, in consultation with the Attorney General, is now required to ensure that a representative of the Drug Enforcement Administration is included in the Intelligence Support Center of each HIDTA.

²⁴ This balance is mandated, in part, to help ensure that the HIDTAs maintain their focus, at least in part, on drug investigations of national importance.

²⁵ The treatment prohibition provision caused consternation among some Members of the House Judiciary Committee during its markup of H.R. 2086 in the 108th Congress. (U.S. Congress, House Committee on the Judiciary, *Office of National Drug Control Policy Reauthorization Act of 2003*, report to accompany H.R. 2086, 108th Cong., 1st sess., H.Rept. 108-167, part 2, July 14, 2003 (Washington: GPO, 2003), pp. 114-119, 152-156, and *passim*.) Although treatment programs cannot be established or expanded, *existing* HIDTA-funded treatment programs, such as those in the Baltimore/Washington HIDTA, can be continued. It is helpful to remember, in this context, that the HIDTA Program is a law enforcement program and that treatment and prevention funds are found elsewhere in the federal drug control budget, principally within the Department of Health and Human Services.

²⁶ This 5% provision was added to H.R. 2829 at the House Judiciary markup by adoption of an amendment proposed by Rep. Linda Sánchez. The underlying bill would have prevented *any* HIDTA funds from being used for prevention.

Annual HIDTA Program Budget Submissions

Previously, the amount of funding received by each HIDTA was determined by the Director after the annual appropriations bill was enacted, thereby bypassing congressional scrutiny. The reauthorization act requires the Director to include in ONDCP's annual budget justification to Congress a breakdown showing the amount being requested for each HIDTA, with a supporting narrative describing the rationale for each request. The narrative must include a detailed justification for each funding request that explains the reasons for the requested funding level, how the funding level was determined based on current assessments of the drug trafficking threat in each HIDTA, how such funding will ensure that the goals and objectives of each HIDTA will be achieved, how the requested funding supports the National Drug Control Strategy, and the amount of HIDTA funds that was used to investigate and prosecute organizations and individuals trafficking in methamphetamine in the prior calendar year along with a description of how those funds were used.

Emerging Threat Response Fund

Subject to the availability of appropriations, the reauthorization act permits the Director to expend up to 10% of appropriated HIDTA funds to respond to any emerging drug trafficking threat in an existing HIDTA, establish a new HIDTA, or expand an existing HIDTA. In doing so, the Director must consider the impact of the funded activities on reducing overall drug traffic in the United States or on minimizing the probability that an emerging drug trafficking threat would spread to other areas of the country.

Evaluation of HIDTA Performance

Within 90 days of enactment and after consulting with each of the HIDTA Executive Boards, the reauthorization act requires the Director to submit to Congress a preliminary report that describes, for every HIDTA,

- the specific purposes of the HIDTA;
- the specific long- and short-term goals and objectives for the HIDTA; and
- the measurements that will be used, and the reporting requirements needed, to evaluate the performance of the HIDTA in achieving its long- and short-term goals.

After the preliminary report, the Director must submit, as part of the annual National Drug Control Strategy, a report on the HIDTA Program that describes the specific purposes and long- and short-term goals and objectives of each HIDTA, and that includes an evaluation of the performance of each HIDTA in accomplishing its specific goals and objectives.

This provision responds to the Office of Management and Budget's (OMB's) finding, under its Program Assessment Rating Tool (PART) review of the HIDTA Program, that the program failed to demonstrate results. The Government Reform Committee believes that ONDCP did not provide OMB with sufficient data on HIDTA accomplishments and that this annual report will do so.²⁷

²⁷ House Government Reform Committee Report, p. 58.

Assessment of Drug Enforcement Task Forces ²⁸

Within one year of enactment, and as part of each subsequent annual National Drug Control Strategy report, the reauthorization act requires the Director to submit to Congress a report that assesses the number and operation of all federally funded drug enforcement task forces within each HIDTA. The report must describe

- each federal, state, local, and tribal drug enforcement task force operating in the HIDTA;
- how the task forces coordinate with each other, with any HIDTA task force, and with investigations funded by the Organized Crime and Drug Enforcement Task Force Program (OCDETF);
- what steps, if any, each task force takes to share information regarding drug trafficking and drug production with other federally funded drug enforcement task forces in the HIDTA;
- the HIDTA's role in coordinating the sharing of such information among task forces;
- the nature and extent of cooperation by each federal, state, local, and tribal participant in ensuring that such information is shared among law enforcement agencies and with the HIDTA;
- the nature and extent to which information sharing and enforcement activities are coordinated with joint terrorism task forces in the HIDTA; and
- any recommendations for ways to ensure that task force resources are used efficiently and effectively to reduce the availability of illegal drugs in the HIDTA.

Assessment of Intelligence Sharing in HDTAs

Within 180 days of enactment, and as part of each subsequent annual National Drug Control Strategy, the reauthorization act requires the Director, in consultation with the Director of National Intelligence, to submit to Congress a report that evaluates existing and planned law enforcement intelligence systems that are supported by each HIDTA or used by task forces receiving any funding under the program, including the extent to which such systems ensure access and availability of intelligence to federal, state, local, and tribal law enforcement agencies within and outside the HIDTA. The report must also describe the extent to which federal, state, local, and tribal law enforcement agencies participating in each HIDTA are sharing law enforcement intelligence information to assess current drug trafficking threats and design appropriate enforcement strategies, and the measures needed to improve effective sharing of information and intelligence regarding drug trafficking and drug production among federal, state, local, and tribal law enforcement agencies that are participating in the HIDTA and between such agencies and similar agencies outside the HIDTA.

²⁸ This provision was originally added to H.R. 2829 as the result of an amendment offered by Chairman Sensenbrenner at the House Judiciary markup. It was carried over to H.R. 6344.

Coordination of Intelligence Sharing With OCDETF

The reauthorization act requires the Director, in consultation with the Attorney General, to ensure that any drug enforcement intelligence obtained by a HIDTA Intelligence Support Center is shared, on a timely basis, with the OCDETF's new drug intelligence fusion center.

Use of Funds to Combat Methamphetamine Trafficking ²⁹

The reauthorization act requires the Director to submit to Congress, as part of the annual budget justification for ONDCP, a report on the use of HIDTA funds in the prior calendar year to investigate and prosecute organizations and individuals trafficking in methamphetamine. The report must include

- the number of methamphetamine manufacturing facilities discovered in the previous fiscal year through HIDTA-funded activities;
- the amounts of methamphetamine or listed chemicals seized by HIDTA-funded initiatives during the previous year; and
- law enforcement intelligence and predictive data from the Drug Enforcement Administration showing patterns and trends in abuse, trafficking, and transportation in methamphetamine and listed chemicals.

Before awarding any funds to a HIDTA, the Director must certify that the law enforcement entities participating in that HIDTA are providing laboratory seizure data to the national clandestine laboratory database at the El Paso Intelligence Center.

Authorization of Appropriations

To fund the HIDTA Program, the reauthorization act authorizes appropriations to ONDCP in the amounts of \$240 million for FY2007, \$250 million for FY2008, \$260 million for FY2009, \$270 million for FY2010, and \$280 million for FY2011. (In FY2006, the HIDTA Program was appropriated \$227 million, down from \$228.4 million in FY2005.)

Funding for Certain HDTAs (Sec. 302)

The Dawson Family Community Protection Act

This section of the reauthorization act incorporates the Dawson Family Community Protection Act (H.R. 812), introduced in the 109th Congress by Representative Cummings.³⁰ The Director is required to use at least \$7 million of HIDTA funds each fiscal year in HDTAs with severe neighborhood safety and illegal drug distribution problems. (This amount represents a \$2 million

²⁹ This subsection was added at the House Judiciary markup of H.R. 2829 by adoption of an amendment offered by Chairman Sensenbrenner. Some provisions of the original amendment were modified or dropped before inclusion in H.R. 6344.

³⁰ The Dawson Family Community Protection Act was first introduced by Rep. Cummings in the 108th Congress (H.R. 1599) in response to the October 2002 firebombing of the Baltimore home of the Dawson family, in which the Dawsons and their five children all died. This crime, called in the bill's findings "a stark example of domestic narco-terrorism," was committed in apparent retaliation for Mrs. Dawson's efforts to help the police end persistent drug dealing in her neighborhood. H.R. 1599 would have required that at least \$1 million be used in HDTAs for the purposes of the bill. The amount was increased to \$5 million in H.R. 812 and to \$7 million in the 109th Congress's reauthorization bills.

increase over the \$5 million amount specified in H.R. 812.)³¹ The funds must be used to ensure the safety of neighborhoods and the protection of communities, including the prevention of witness intimidation in drug cases, and to combat illegal drug trafficking through methods such as establishing and operating toll-free telephone hotlines for the public to provide information about illegal drug-related activities.

Assessment of the “Balloon Effect” (Sec. 303)

The spread of urban drug traffickers into rural, suburban, and smaller urban areas to escape intensive law enforcement efforts against them is known as the “balloon effect.” The reauthorization act requires the Director to assess the ability of the HIDTA Program to respond to the balloon effect by conducting a demonstration project in the New York/New Jersey HIDTA. The New York counties of Albany, Onondaga, Monroe, and Erie will be added to the New York/New Jersey HIDTA, and the ability of the HIDTA to deal with the movement of drug traffickers into these more rural areas will be assessed.

Counterdrug Technology Assessment Center (Sec. 401)

The head of the Counterdrug Technology Assessment Center (CTAC) has held the title of “Director of Technology.” The reauthorization act changes this title to “Chief Scientist.”

The reauthorization act requires the Secretary of Homeland Security to render assistance and support, to the maximum extent practicable, to ONDCP in the conduct of counterdrug technology assessment. (Existing law already requires the Secretary of Defense and the Secretary of Health and Human Services to do so.)

Technology Transfer Program

The reauthorization act grants statutory authority to CTAC’s counterdrug technology transfer program for the first time. The Chief Scientist, with the advice and counsel of experts from state, local, and tribal law enforcement agencies, is responsible to the Director for coordinating and implementing CTAC’s technology transfer program. The purpose of the program is to transfer technology and associated training directly to state, local and tribal law enforcement agencies.

Technology transfers will be made in priority order based on

- the need of potential recipients for such technology,
- the effectiveness of the technology to enhance current counterdrug activities of potential recipients, and
- the ability and willingness of potential recipients to evaluate transferred technology.

Agreement Authority

The act provides that the Director may enter into an agreement with the Secretary of Homeland Security to transfer technology with both counterdrug and homeland security applications to state, local, and tribal law enforcement agencies on a reimbursable basis.

³¹ The increase came about as the result of an amendment offered by Chairman Sensenbrenner at the House Judiciary markup of H.R. 2829.

Reporting Requirement

Before July 1 of each year, the Director is required by the reauthorization act to submit to the appropriate congressional committees a report that contains

- the number of technology transfer requests received during the previous 12 months, including the identity of each requesting agency and the type of technology requested;
- the number of requests fulfilled during the previous 12 months, including the identity of each requesting agency and the type of technology requested;
- a summary of the criteria used to determine which requests were funded and which were not;
- a general assessment of the future needs of the program, based on expected changes in threats, expected technologies, and the likely needs of potential recipients; and
- an assessment of the effectiveness of the technologies transferred, based in part on the evaluations provided by the recipients, with a recommendation of whether the technology should continue to be offered through the program.

Despite these provisions contained in the reauthorization act, the administration's FY2008 budget request proposed ending CTAC's technology transfer program and devoting all CTAC funding to its research and development program. Subsequently, CTAC was appropriated \$1 million for research activities in FY2008, a significant reduction from the agency's \$20 million allotment in FY2007. CTAC no longer accepts technology transfer applications from law enforcement agencies.

National Youth Anti-Drug Media Campaign (Sec. 501)

The Drug-Free Media Campaign Act of 1998,³² less than two pages in length, is the law that had governed the media campaign since its inception. It instructed the ONDCP Director to "conduct a national media campaign ... for the purpose of reducing and preventing drug abuse among young people in the United States." It specified uses of campaign funds that were permitted and prohibited, established the matching requirement, and required the Director to report annually to Congress on the campaign's activities. It is repealed by the reauthorization act, which greatly expands upon the language of the old act, and adds many new program requirements, to become sec. 709 (21 U.S.C. 1708) of current law.³³

Purpose of the Campaign

The reauthorization act restates somewhat the campaign's purpose—from "reducing and preventing drug abuse among young people" to "preventing drug abuse among young people." Dropping the goal of *reducing* youth drug abuse seems to emphasize the preventive nature of the media campaign—"stopping drug use before it starts" as the National Drug Control Strategy puts it. The act also adds two additional purposes: "increasing awareness of adults of the impact of drug abuse on young people" and "encouraging parents and other interested adults to discuss with young people the dangers of illegal drug use." The addition of adults as a key target audience of

³² P.L. 105-277, Division D, Title I, sec. 102, October 21, 1998, 112 Stat. 2681-752, 21 U.S.C. § 1801, *et seq.*

³³ Sec. 709 of the expired act authorized creation of the President's Council on Counter-Narcotics, which was never established.

the campaign brings the statute into conformance with ONDCP's practice of directing up to 60% of campaign advertising to adults who influence youth, such as parents, teachers, clergy, and mentors.

Requirements for the Use of Campaign Funds

The reauthorization act adds to existing law certain requirements regarding the use of campaign funds. For example, it requires that not more than \$1.5 million can be spent on creative services per fiscal year. This limit can be increased to \$2 million to meet urgent campaign needs with advance approval of the House and Senate Appropriations Committees. Most creative services, however, will continue to be donated, as at present.

Testing and Evaluation of Advertising

The act requires that all ads be tested for effectiveness before they are aired. This requirement may be waived under certain circumstances. The act requires that the effectiveness of the campaign be evaluated by April 20 of each year by an independent entity. The evaluation must be based on specified survey research measures of drug use and other relevant studies to be determined by the Director.

Purchase of Advertising Time and Space

The reauthorization act requires that at least 77% of appropriated campaign funds be used to purchase advertising time and space. The act further states that in any fiscal year for which less than \$125 million is appropriated for the campaign, at least 72% must be spent on advertising time and space. In any fiscal year for which more than \$195 million is appropriated, at least 82% must be spent on advertising time and space.

Division of Responsibilities and Functions

The reauthorization act adds to current law a description of the separate duties of the Director, the Partnership for a Drug-Free America (PDFA), and the media buying contractor as follows:

Responsibilities of the Director . The Director is responsible for implementing a media campaign that focuses on the purposes set forth in the act and for approving (1) the overall campaign strategy, (2) all advertising and promotional material used in the campaign, and (3) the plan for the purchase of advertising time and space for the campaign.

Responsibilities of the Partnership for a Drug-Free America . The Partnership for a Drug-Free America (PDFA) develops and recommends strategies to achieve the goals of the campaign, including addressing national, regional, and local drug threats, such as methamphetamine and ecstasy. The PDFA is also responsible for creating all advertising to be used in the campaign, except advertisements that are

- provided by other nonprofit entities under the matching requirement;
- intended to respond to high-priority or emergent campaign needs that cannot timely be obtained at no cost (not including production costs and talent reuse payments), provided that any such advertising material is reviewed by the PDFA;
- intended to reach a minority, ethnic, or other special audience that cannot be obtained at no cost (not including production costs and talent reuse payments), provided that any such advertising material is reviewed by the PDFA; or

- any other advertisements that the PDFFA is unable to provide or if the Director determines that another entity is more appropriate, in which case the Director must notify the House and Senate committees of jurisdiction, in writing, not less than 30 days prior to letting the contract.

Responsibilities of the Media Buying Contractor . The Director contracts with a media buying contractor who plans and purchases advertising time and space for the campaign. The contractor cannot provide any service or material, or conduct any function or activity, that the Director determines should be provided by the PDFFA.

Prohibition of Ads for Partisan Political Purposes

The expired act prohibits the expenditure of campaign funds “for partisan political purposes.” The reauthorization act expands this language to read: “For partisan political purposes, or express advocacy in support of or to defeat any clearly identified candidate, clearly identified ballot initiative, or clearly identified legislative or regulatory proposal.” This provision is significant because the Director has been accused by some of using media campaign ads to oppose medical marijuana and other drug reform voter initiatives at state and local levels.

The act also adds a prohibition against funding any advertising containing a primary message intended to promote support for the media campaign or to solicit private sector contributions to the campaign. All campaign ads must contain primary messages intended to reduce or prevent illicit drug use.

No-Cost Matching Requirement

The reauthorization act continues the campaign’s matching requirement under which media companies paid by the campaign to run antidrug ads are required to donate an equal amount of advertising time or space or other in-kind contributions to the antidrug effort, thereby doubling the campaign’s “firepower.”

The act requires that at least 70% of such no-cost match advertising directly relates to the substance abuse prevention message of the media campaign. The required percentage increases to 85% in any fiscal year in which less than \$125 million is appropriated to the campaign.³⁴ The remaining ads still have to include a clear antidrug message, although it does not have to be the primary message of the match advertising.

Financial and Performance Accountability

The reauthorization act requires the Director to implement audits and reviews of the costs incurred by campaign contractors and subcontractors pursuant to sec. 304C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 254d). An audit must also be conducted to determine whether these campaign costs are allowable under sec. 306 of the same act. Employees of Ogilvy & Mather, the firm that previously held the contract for purchasing advertising time and space for the media campaign, were charged with over-billing the

³⁴ The campaign was appropriated less than \$125 million in both FY2005 (\$119 million) and FY2006 (\$100 million). For a table showing detailed funding information since the campaign’s inception in 1998, see CRS Report RS21490, *War on Drugs: The National Youth Anti-Drug Media Campaign*, by Mark Eddy.

government for its services.³⁵ This audit requirement attempts to prevent overcharges in the future.

Report to Congress³⁶

The Director must submit annually a report to Congress that describes

- the campaign strategy and whether specific objectives of the campaign were accomplished;
- steps taken to ensure that the campaign operates in an effective and efficient manner consistent with the campaign's overall strategy and focus;
- plans for the purchase of advertising time and space;
- policies and practices implemented to ensure that federal funds are used responsibly to purchase advertising time and space and eliminate the potential for waste, fraud, and abuse; and
- all contracts entered into with a corporation, partnership, or individual working on behalf of the campaign.

Prevention of Marijuana Use

The act contains congressional findings on the harmfulness of marijuana and authorizes the Director to emphasize the prevention of youth marijuana use in the campaign's advertisements and other activities. This provision brings the media campaign's statutory language in line with what the campaign has been doing in recent years.

Prevention of Methamphetamine Abuse³⁷

The reauthorization act requires the Director to expend not less than 10% of funds appropriated for the campaign in a fiscal year on advertisements and grants specifically intended to reduce the use of methamphetamine. After FY2007, if the Director certifies in writing to Congress that domestic methamphetamine laboratory seizures (as reported to DEA's El Paso Intelligence Center) have decreased by at least 75% from the 2006 level, the Director may apply the anti-methamphetamine funds to advertisements specifically intended to reduce the use of other drugs, as the Director considers appropriate.

Authorization of Appropriations

The reauthorization act authorizes appropriations for the media campaign in the amounts of \$195 million each for FY2007 and FY2008 and \$210 million each for FY2009 through FY2011.

³⁵ U.S. General Accounting Office, *Anti-Drug Media Campaign: Aspects of Advertising Contract Mismanaged by the Government; Contractor Improperly Charged Some Costs*, GAO-01-623, June 2001.

³⁶ Due to a drafting error, this reporting requirement is repeated from sec. 203 of the reauthorization act. In this instance, however, it is missing three reporting elements that are contained in the earlier version.

³⁷ This provision was added to H.R. 2829 by a floor amendment offered by Reps. Rehberg, Boozman, Steve King, Capito, Souder, and Graves.

Authorization of Appropriations for ONDCP (Sec. 601)

The reauthorization act amends current law to authorize, except where the bill authorizes specific amounts, the appropriation of such sums as may be necessary for FY2006 through FY2010.

Termination Date for ONDCP (Sec. 602)

During consideration of ONDCP reauthorization in the 109th Congress, the agency's sunset provision proved controversial. H.R. 2829 (sec. 3) would have repealed the sunset provision contained in law (sec. 715) (21 U.S.C. § 1712), which technically terminated ONDCP on September 30, 2003.³⁸ The House bill contained no new termination provision, thereby authorizing ONDCP indefinitely. During floor consideration of H.R. 2829, Representative Paul offered an amendment to add a five-year sunset provision to H.R. 2829, but the amendment was defeated 85-322.

All three of the previous ONDCP authorizing acts contained five-year sunset provisions. S. 2560 (sec. 602) would have stuck to custom and extended ONDCP for five years, terminating the agency on September 30, 2010. It was the Senate's approach that prevailed and was carried over into H.R. 6344. The reauthorization act, therefore, extends the life of ONDCP through the end of FY2010.

Designation of U.S. Anti-Doping Agency (Secs. 701-703)

The reauthorization act designates the U.S. Anti-Doping Agency as the U.S. representative responsible for coordinating with other anti-doping organizations involved in the coordination of amateur athletic competitions that are recognized by the U.S. Olympic Committee to ensure the integrity of amateur athletic competitions, the health of the athletes, and the prevention of use of performance-enhancing drugs, or performance-enhancing genetic modifications accomplished through gene-doping, by U.S. amateur athletes. This provision was taken from S. 2560 (Title VII), which incorporated the language of S. 529.³⁹ The act also authorizes appropriations for the U.S. Anti-Doping Agency.⁴⁰

Drug-Free Communities Act Reauthorization (Secs. 801-805)

The act reauthorizes the Drug-Free Communities Support Program,⁴¹ a grant program funded by ONDCP and administered by the Substance Abuse and Mental Health Services Administration (SAMHSA), an agency of the U.S. Department of Health and Human Services. It amends the Drug-Free Communities Act of 1997 (21 U.S.C. 1524(a)) to reauthorize the program through FY2012. It authorizes appropriations for the program in the amounts of \$109 million for FY2008, \$114 million for FY2009, \$119 million for FY2010, \$124 million for FY2011, and \$129 million for FY2012.

The act requires that not more than 3% of the funds appropriated for the program may be used by ONDCP to pay for administrative costs. The agency delegated to carry out the program may use up to 5% of the funds allocated for grants for administrative costs.

³⁸ Despite this sunset provision, Congress continued to fund the agency through annual appropriations.

³⁹ Only the proposed authorizations differed between the two bills.

⁴⁰ For more on this subject, which is not directly related to ONDCP, see CRS Report RL32894, *Anti-Doping Policies: The Olympics and Selected Professional Sports*, by L. Elaine Halchin.

⁴¹ Reauthorization of this program was included in S. 2560, as introduced.

The act states that a grantee cannot be suspended or terminated from the program without first being afforded a fair, timely, and independent appeal. This provision arose out of a controversy in 2005 when a number of community anti-drug coalitions unexpectedly lost their funding. The Director must submit a report to Congress, within 60 days of enactment, that details the appeals process required by this provision.

The act increases the maximum value of individual grants that can be awarded under this program in a fiscal year from \$100,000 to \$125,000 and states that the Director cannot impose any eligibility criteria on new applicants or renewal grantees that are not provided for in statute.

The Director must grant \$2 million for each fiscal year from 2008 through 2012 to the Community Anti-Drug Coalitions of America to provide for the continuation of the National Community Anti-Drug Coalition Institute.

National Guard Counterdrug Schools (Sec. 901)

The reauthorization act statutorily authorizes, for the first time, the operations of five counterdrug schools operated by the National Guard, requires an annual report to Congress on their activities, and authorizes appropriations to the Department of Defense of \$30 million for each fiscal year from 2006 through 2010.⁴²

National Methamphetamine Clearinghouse (Sec. 1001)⁴³

The reauthorization act contains the National Methamphetamine Information Clearinghouse Act of 2006, which establishes, within the Department of Justice (DOJ),⁴⁴ an information clearinghouse to be known as the National Methamphetamine Information Clearinghouse (NMIC). The act also creates a National Methamphetamine Advisory Council, consisting of 10 members appointed by the Attorney General to three-year terms. At least three of the members must represent law enforcement agencies, at least four must be from nonprofit organizations that provide services related to methamphetamine, and one must represent the Department of Health and Human Services. Advisory council members will not be compensated for their council duties, but they will receive travel and per diem expenses.

Clearinghouse Requirements and Review

The NMIC is created to promote information sharing of successful law enforcement, treatment, environmental, social service, and other programs related to the production, use, or effects of methamphetamine and of grants available for such programs. It will provide a toll-free number and a website for information on the short- and long-term effects of methamphetamine use, methamphetamine treatment programs and programs for drug endangered children, and grants for methamphetamine-related programs. It will allow a qualified entity to submit items to be posted on the website regarding successful public or private programs or other useful information related to the production, use, or effects of methamphetamine. (A “qualified entity” is defined as a state or local government, school board, or public health, law enforcement, nonprofit, or other nongovernmental organization that provides services related to methamphetamine.) The website will include a restricted section, accessible only by law enforcement organizations, that contains

⁴² These provisions, which are not directly related to ONDCP, were introduced as S. 1785 in the 109th Congress and were subsequently incorporated into the text of S. 2560, from which they made their way into H.R. 6344.

⁴³ This provision was added by a floor amendment to H.R. 2829 offered by Reps. Chabot, Boswell, Calvert, Cannon, and Larsen. The language was somewhat modified for inclusion in H.R. 6344.

⁴⁴ H.R. 2829 would have created the clearinghouse within ONDCP. S. 2560 placed it in DOJ.

successful strategies, training techniques, and other information that the advisory council determines helpful to law enforcement agency efforts to combat the production, use, or effects of methamphetamine.

Within 30 days of submission of an item by a qualified entity, the advisory council must review an item submitted for posting on the website to evaluate and determine whether the item meets the requirements for posting and, in consultation with the Attorney General, to determine whether the item should be posted in a restricted section of the website. Within 45 days of submission of an item, the Council will post the item on the website or notify the entity that submitted the item of the reason for not posting it and of any modifications that could be made that would allow it to be posted.

Authorization of Appropriations

The act authorizes to be appropriated \$500,000 for FY2007 to establish the clearinghouse and council and such sums as are necessary for the operation of the clearinghouse and council for each of fiscal years 2007 through 2009.⁴⁵

Repeals (Sec. 1101)

The reauthorization act repeals section 710 of the expired act, which provided for the establishment of a Parents Advisory Council on Youth Drug Abuse, which is no longer active. It also repeals section 6073 of the Forfeiture Amendments Act of 1988 (21 U.S.C. 1509), establishing the Treasury Department's Special Forfeiture Fund, which once provided funds to ONDCP but no longer exists.

Controlled Substances Act Amendments (Sec. 1102)

The reauthorization act amends section 303(g)(2) (21 U.S.C. 823(g)(2)) of the Controlled Substances Act relating to registration requirements of practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment. This provision is unrelated to ONDCP and its drug-control programs.

Report on Intelligence Sharing (Sec. 1103)⁴⁶

The reauthorization act requires the Director to submit to Congress, within 180 days of enactment, a report evaluating existing and planned law enforcement intelligence systems used by federal, state, local, and tribal law enforcement agencies responsible for drug trafficking and drug production enforcement. The report must address

- the current law enforcement intelligence systems used by federal, state, and local law enforcement agencies;
- the compatibility of such systems in ensuring access and availability of law enforcement intelligence to federal, state, local, and tribal law enforcement agencies;

⁴⁵ H.R. 2829 would have authorized an appropriation of \$1 million for FY2007 to establish the clearinghouse and the advisory council, and would have authorized funding necessary for their operation for each fiscal year through FY2011. S. 2560, on the other hand, would have authorized \$2 million to establish the clearinghouse and the advisory council and funding necessary for their operation through FY2010.

⁴⁶ This report requirement originated in the Senate Reauthorization bill in the 108th Congress (S. 1860, sec. 307) and reappeared in S. 2560 (sec. 1103) in the 109th Congress.

- the extent to which federal, state, local, and tribal law enforcement agencies are sharing law enforcement intelligence information needed to assess current threats and to design appropriate enforcement strategies; and
- the measures needed to ensure and promote effective information sharing among law enforcement intelligence systems operated by federal, state, local, and tribal law enforcement agencies responsible for drug trafficking and drug production enforcement.

South American Heroin Strategy (Sec. 1104)⁴⁷

The reauthorization act requires the Director, in coordination with the Secretary of State, to submit to Congress, not more than 90 days after enactment, a comprehensive strategy that addresses the increased threat from South American heroin, especially Colombian heroin and the emerging threat from opium poppy cultivation in Peru. The act requires that the strategy include efforts to eliminate the problem at the source. They would also require interdiction and precursor chemical controls, demand reduction and treatment, alternative development programs, efforts to inform and involve local citizens, and assessment of the specific level of funding and resources necessary to simultaneously address the threats from South American heroin and from Colombian and Peruvian coca. Classified or sensitive information would be presented to Congress separately from the rest of the strategy.

Model State Drug Laws (Sec. 1105)⁴⁸

The reauthorization act authorizes an appropriation of \$1.5 million for each fiscal year 2007 through 2011 to provide for a 501(c)(3) corporation to advise states on establishing laws and policies to address alcohol and other drug issues, based on the model state drug laws developed by the President's Commission on Model State Drug Laws in 1993, and to revise such model state drug laws and draft supplementary model state laws to take into consideration changes in the alcohol and drug abuse problems in the state involved.

Study of Iatrogenic Addiction (Sec. 1106)⁴⁹

The reauthorization act requires the Director to request the Institute of Medicine of the National Academy of Sciences to conduct a study examining certain aspects of iatrogenic addiction to opioid analgesic drugs in Schedules II and III of the Controlled Substances Act (21 U.S.C. 812). The act defines *iatrogenic addiction* as

an addiction developed from the use of an opioid analgesic by an individual with no previous history of any addiction, who has lawfully obtained and used the drug for a legitimate medical purpose by administration from, or pursuant to the prescription or order of, an individual practitioner acting in the usual course of professional practice.

The study shall assess the current scientific literature to determine, if possible,

- the rate of iatrogenic addiction associated with the appropriate use of prescription opioid analgesics;

⁴⁷ This provision originated as an amendment proposed by Rep. Mica to H.R. 2086, the House reauthorization bill in the 108th Congress.

⁴⁸ This provision was added to H.R. 2829 by a floor amendment offered by Rep. Lungren.

⁴⁹ This provision was added to H.R. 2829 by a floor amendment offered by Rep. Lynch.

- the impact of iatrogenic addiction associated with these drugs on the individual, the prescriber, other patients, and society in general;
- the comparative abuse liability of these prescription drugs when used properly by the ultimate user for a legitimate medical purpose;
- the types of prospective or retrospective studies that should be undertaken to determine the rate of iatrogenic addiction associated with the appropriate use of opioid analgesics; and
- a feasible timeline for conducting and reporting such studies, should the current state of the scientific literature be insufficient to determine the rate, impact, and comparative abuse liability of these drugs.

A report on the status of the study must be submitted to Congress within one year of the date of enactment of the act.

Strategy to Stop Internet Drug Advertising (Sec. 1107)

The reauthorization act requires the Director, within 120 days of enactment, to submit to Congress a strategy to stop advertisements that provide information about obtaining scheduled prescription drugs over the Internet without a lawful prescription.

Report on Diversion of Prescription Drugs (Sec. 1108)

The reauthorization act requires the Director, in consultation with the Secretary of Health and Human Services, to submit to Congress, within 90 days of enactment, a report that includes a plan to conduct a study on the illegal diversion and inappropriate uses of prescription drugs. The report would include

- methods to utilize surveys to provide appropriate baseline data on the diversion and abuse of scheduled prescription drugs to evaluate the extent and nature of potential problems associated with inappropriate uses of prescription drugs in order to guide corrective actions to reduce such problems, without unintentionally hindering access to these drugs for legitimate medical purposes; and
- a scientifically based analysis of the relative contribution of both innate and acquired genetic factors, environmental factors, psychological factors, and drug characteristics that contribute to addiction to prescription drugs.

Afghan Heroin Strategy (Sec. 1109)

The reauthorization act requires the Director to submit to Congress, within 90 days of enactment, a comprehensive strategy that addresses the increased threat from Afghan heroin. The strategy must include opium crop eradication efforts; the destruction of heroin and raw opium stockpiles and of heroin production and storage facilities; interdiction and precursor chemical controls; demand reduction and treatment; alternative development programs; measures to improve cooperation and coordination between relevant federal, foreign, and international agencies; and an assessment of the amount of funding and resources necessary to reduce the production and trafficking of heroin. Classified or sensitive information would be presented to Congress separately from the rest of the strategy.

Southwest Border Counternarcotics Strategy (Sec. 1110)

Within 120 days of enactment and every two years thereafter, the reauthorization act requires the Director to submit to Congress a Southwest Border Counternarcotics Strategy. This report would set forth the government's strategy for preventing the illegal trafficking of drugs across the international border between the United States and Mexico, state the specific roles and responsibilities of the relevant National Drug Control Program agencies for implementing the strategy, identify the specific resources required to enable the relevant drug control agencies to implement the strategy, and include a strategy to end the construction of tunnels under the border.⁵⁰ The Director shall issue the strategy in consultation with the heads of the relevant National Drug Control Program agencies. The strategy cannot change existing agency authorities or the laws governing interagency relationships, but it may include recommendations about changes to such authorities or laws. Classified or sensitive information will be submitted to Congress separately from the rest of the strategy.

Mycoherbicide Study (Sec. 1111)

The reauthorization act requires the Director to submit to Congress, within 90 days of enactment, a report that includes a plan to conduct, on an expedited basis, a scientific study of the use of mycoherbicides as a means of illicit drug crop elimination. The report will be prepared by an appropriate government scientific research entity and must include a complete and thorough scientific peer review. The study must contain an evaluation of the likely human health and environmental impacts of mycoherbicides derived from fungus naturally existing in the soil.⁵¹

H.R. 2829 would have required the report to include a plan to conduct controlled scientific testing in a major drug-producing nation of a mycoherbicide naturally existing in the producing nation. This was changed in H.R. 6344 to require that the study be conducted in U.S. territory and not in any foreign country. The change was prompted by public opposition to this provision, which proved to be controversial.⁵²

State Precursor Chemical Control Law Study (Sec. 1112)

The reauthorization act requires the Director to conduct, in consultation with the National Alliance for Model State Drug Laws, a study of state laws with respect to precursor chemical controls. The Director must submit to Congress, not later than six months after the date of enactment, a report on the results of the study. The report must include a comparison of the state laws studied, the effectiveness of each such law, and a list of best practices observed with respect to such laws.

Study of Drug-Endangered Children Programs (Sec. 1113)

The reauthorization act requires the Director to submit to Congress, no later than six months after the date of enactment, a report on methamphetamine-related activities conducted by state drug-

⁵⁰ The provision on tunnels was added to H.R. 2829 by a floor amendment offered by Rep. Filner. It also requires the Director to recommend criminal penalties for persons who construct or use such tunnels.

⁵¹ The requirement that the report look at the effects of mycoherbicides on human health and the environment was added to H.R. 2829 by the adoption of an amendment offered by Rep. Cummings at the Government Reform Committee markup of H.R. 2829 on June 16, 2005. The overall provision was originally proposed by Rep. Burton.

⁵² See, for example, "Repeating Mistakes of the Past: Another Mycoherbicide Research Bill," a report by the Drug Policy Alliance, available at <http://www.drugpolicy.org>.

endangered children programs. The study must include an analysis of the best practices of the activities studied and recommendations for establishing a national policy to address the problems of children whose physical, mental, or emotional health are at risk because of the production, use, or effects of methamphetamine by another person.

Drug Court Hearings at Alternative Sites Study (Sec. 1114)⁵³

The reauthorization act requires the Director to conduct a study on drug court programs that conduct hearings in nontraditional public places, such as schools, so that students see the consequences of drug abuse by nonviolent offenders, thereby serving as a strong deterrent and promoting demand reduction. The Director must include a report on this study with the Drug Control Strategy that is due to Congress on February 1, 2007. The report must include an evaluation of the results of the study and such recommendations as the President considers appropriate.

Report on Tribal Participation in HIDTAs (Sec. 1115)⁵⁴

Within one year of the bill's enactment, the reauthorization act requires the Director to submit a report to Congress on the representation of tribal governments in the High Intensity Drug Trafficking Areas (HIDTA) Program. The report must include

- a list of tribal governments represented in the program and a description of their participation,
- an explanation of the rationale for the level of representation by tribal governments, and
- recommendations by the Director on methods for increasing the number of tribal governments represented in the HIDTA Program.

Report on School Drug Testing (Sec. 1116)

The reauthorization act requires the Director, within 120 days of enactment, to submit a report to Congress on drug testing in schools. The report must include a list of secondary schools that have initiated drug testing after attending a conference on school drug testing sponsored by ONDCP.

Report on ONDCP Performance Bonuses (Sec. 1117)

The act requires the Director, within 120 days of enactment, to submit a report to Congress on performance bonuses awarded at ONDCP. The report must include a list of employees who received performance bonuses, and the amount of such bonuses, for the period beginning on October 1, 2004, and ending on the date of submission of the report.

Sponsorship Identification in Advertisements (Sec. 1118)⁵⁵

The reauthorization act requires that every advertisement or other communication that ONDCP pays for, either directly or through a contract, shall include a prominent notice stating that it was

⁵³ This provision was added to H.R. 2829 by a floor amendment offered by Rep. Boozman.

⁵⁴ This provision was added to H.R. 2829 by a floor amendment offered by Rep. Renzi.

⁵⁵ This section was added to H.R. 2829 by an amendment offered by Ranking Member Waxman at the Government

paid for by ONDCP. This requirement includes advertisements disseminated in any form and includes communications by individuals in any form, including speech, print, or any electronic means. This provision prevents, among other things, the distribution of so-called “video news releases” by ONDCP—a practice that ONDCP says it has stopped.⁵⁶

Identification of sponsorship of broadcast matter is required by sec. 317 of the Communications Act of 1934.⁵⁷ The Advertising Council had earlier requested a waiver of this requirement so that advertisements donated to ONDCP’s media campaign under the matching requirement would not have to be identified as having been sponsored by ONDCP. The Federal Communications Commission (FCC) denied the request in November 2002.⁵⁸

In the 108th Congress, there was a legislative attempt to nullify the 2002 FCC order. The ONDCP reauthorization bills in both the Senate (S. 1860, sec. 404(3)) and the House (H.R. 2086, sec. 10(e)(4)) contained provisions to exempt advertisements donated to the National Youth Anti-Drug Media Campaign under the matching requirement from being identified as sponsored by ONDCP. (The provision in the House bill was dropped at markup by the full Government Reform Committee.) This provision in the reauthorization act will have broader applicability, extending beyond the media campaign to all public announcements by ONDCP.

Awards for Coerced Abstinence Programs (Sec. 1119)⁵⁹

The reauthorization act require the Director to make competitive awards to fund demonstration programs by eligible local partnerships to coerce abstinence, through the use of drug testing and sanctions, of chronic hard-drug users living in the community under the supervision of the criminal justice system.

Use of Award Amounts

The amounts awarded to eligible partnerships will be used to

- support the efforts of the agencies, organizations, and researchers included in the eligible partnership;
- develop and field a drug testing and graduated sanctions program for chronic hard-drug users living in the community under criminal justice supervision; and
- assist chronic hard-drug users by strengthening rehabilitation efforts through job training, drug treatment, or other services.

Definition of Eligible Partnership

The term “eligible partnership” is defined as a working group whose application to the Director

Reform Committee markup on June 16, 2005.

⁵⁶ House Government Reform Committee Report, p. 69.

⁵⁷ Sec. 317 (47 U.S.C. § 317) states that all matter broadcast by a station in exchange for consideration from any person shall, at the time the matter is broadcast, be announced as paid for or furnished by that person.

⁵⁸ Federal Communications Commission, Order FCC 02-268, released November 7, 2002.

⁵⁹ This section was added to H.R. 2829 at the House Judiciary Committee markup by adoption of an amendment offered by Rep. Schiff. “Coerced abstinence” is an idea propounded by Mark A.R. Kleiman, Professor of Public Policy at the School of Public Affairs, University of California at Los Angeles, and a constituent of Rep. Schiff. See his “Controlling Drug Use and Crime Among California’s Drug-Involved Offenders: Testing, Sanctions, and Treatment,” available at http://www.spa.ucla.edu/faculty/kleiman/Controlling_Drug_Use.pdf

- identifies the roles played, and certifies the involvement of, three or more agencies or organizations, which can include state or local agencies (such as those carrying out police, probation, prosecution, courts, corrections, parole, or treatment functions), federal drug control agencies, and community-based organizations;
- includes a qualified researcher;
- includes a plan to administer drug tests at least twice a week to recovering addicts living in the community while under the supervision of the criminal justice system, and to swiftly and certainly impose a known set of graduated sanctions for noncompliance with community-release provisions relating to drug abstinence (whether imposed as a pretrial, probation, or parole condition or otherwise);
- includes a strategy for responding to a range of substance use and abuse problems and a range of criminal histories;
- includes a plan for integrating data infrastructure among the agencies and organizations included in the eligible partnership to enable seamless, real-time tracking of hard-drug users under criminal justice supervision; and
- includes a plan to monitor and measure the progress toward reducing the percentage of the population of hard-drug users under criminal justice supervision who, upon being summoned for a drug test, either fail to show up or test positive for drugs.

Reports to Congress

Not later than June 1, 2009, the Director must submit to Congress an interim report identifying the best practices in coercing abstinence in chronic hard-drug users, including the best practices identified through the activities funded under this section. Not later than June 1, 2010, the Director must submit to Congress a final report on the best practices in coercing abstinence in hard-drug users as identified by the demonstration programs.

Authorization of Appropriations

The act authorizes an appropriation for this awards program in the amount of \$4.9 million each for FY2007 through FY2009.⁶⁰

Policy Relating to Syringe Exchange Programs (Sec. 1120)⁶¹

The reauthorization act amends current law (sec. 703(a)) (21 U.S.C. §1702(a)) by adding at the end the following statement:

When developing the national drug control policy, any policy of the Director relating to syringe exchange programs for intravenous drug users shall be based on the best available medical and scientific evidence regarding their effectiveness in promoting individual health and preventing the spread of infectious disease, and their impact on drug addiction and use. In making any policy relating to syringe exchange programs, the Director shall consult with the National Institutes of Health and the National Academy of Sciences.

⁶⁰ The annual authorization is reduced from the \$10 million amount proposed in H.R. 2829, as amended.

⁶¹ This section was added to H.R. 2829 by an amendment offered by Ranking Member Waxman and modified by the Government Reform Committee at markup on June 16, 2005.

While Representative Souder, the act's sponsor, does not advocate needle exchange programs, he supported this amendment at the Government Reform Committee markup because he does believe that policy relating to the issue should be backed by the results of scientific studies. This was reiterated in the Government Reform Committee report on H.R. 2829, which states that "in adopting this amendment the Committee in no way endorses the use of such programs."⁶²

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⁶² U.S. Congress, House Committee on Government Reform, Office of National Drug Control Policy Reauthorization Act of 2005, report to accompany H.R. 2829, 109th Cong., 1st sess., H.Rept. 109-315, part I (Washington: GPO, 2005), p. 70.